

Symposium on The Civil Rights of Public School Students

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FOR JACK, GOOD SAMARITAN AND GENTLE TEACHER

Edward McGlynn Gaffney, Jr.*

The first time I met Jack Hiller was on the occasion of this law school's 100th anniversary in 1979. I was teaching at Notre Dame at the time and was invited to participate in an event exploring connections between religion and law in a Lutheran law school. Curiously, the invitation came not from the law school, but from Dr. Richard Baepler, then Vice-President for Academic Affairs. I only met Jack at the end of the day's proceedings, when a total stranger treated me like a neighbor and became my friend for over three decades.

On the afternoon of the day we met, I set out for Valpo from South Bend in my little VW bug. It had been having difficulties of various sorts, but this afternoon was the day it finally "died" in Posnerian terms. I managed to push the car off the road into a gas station that luckily enough had a mechanic on duty. His analysis of the repairs needed yielded a quick economic decision that it was time to say goodbye to my cute yellow beetle, with thanks for getting me around so frugally for so long.

The place it gave up the ghost matters. Rolling Prairies, Indiana may sound lovely, but to a kid from San Francisco I was underwhelmed by the "hills" implied in "rolling." More critically, this bump on the map (Google it, you'll see) with a population of fifty-one (or perhaps thirty-five) had not yet developed an infrastructure for public transportation of any sort. I walked back to the side of the road with my little attaché case full of notes on law and justice, and with more bravado than confidence stuck my thumb in the air. The first car that came along Route 2 pulled over. The driver asked where I needed to go. "A place called Valpo," I said. "The law school there is having its 100th birthday party today." "I'm a Valpo alum," he said; "I'm on the way to the same event." Sweet serendipity. Raw dumb luck. Sugar. Call it what you will. To me this fellow was the first Good Samaritan I had ever met, and right on time to get me to the Valpo School of Law for the beginning of the festivities. (Dear Mr. Samaritan, I am having a senior moment right now as I try unsuccessfully to recall your name; if you are an avid reader of this journal, please contact me, so that I may express my gratitude more suitably.)

My task that day was to reply to a lecture by a well known Lutheran pastor from Brooklyn named Richard John Neuhaus (subsequently founding editor of *First Things* and a Roman Catholic priest). At the time

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I had met Neuhaus only once, but already admired his role as a pastor in the 1960s who had preached and acted boldly against the war in southeast Asia, and who was in the vanguard of the civil rights movement.

In his letter of invitation, Dr. Baepler informed me that my task was to present a “Catholic perspective on natural law that would be useful for a Lutheran law school.” According to regnant assumptions at the time, most Protestants preferred to elaborate a biblical justification for their engagement in issues of social justice and left natural law argumentation to Roman Catholics. But I wasn’t sure about what to say about that immense theme since Pastor Neuhaus did not send me his paper in advance.

In his now famous essay “Law and the Rightness of Things,” Neuhaus deftly noted the deficiencies of nineteenth-century British utilitarianism and twenty-century American legal realism and positivism and laid the groundwork for a natural law argument based in part on the work of the eminent John Rawls, whose “persons behind the veil of ignorance” seemed to Neuhaus too bloodless and lifeless to be helpful in constructing a plausible public jurisprudence. Not bad, I thought. This pastor obviously knows a lot more about law than most lawyers know about religion.

After Neuhaus had done what I thought I was supposed to do, I kept wondering during dinner conversation what to talk about. The only clarity I now had from Baepler was “about forty-five minutes.” There are only so many ways of expressing fundamental agreement with someone’s paper, and it is usually pretty boring if consensus arrives prematurely. So I decided to start my reply with a few sentences that were too long and dangly. (I had not yet met Jack). The opening paragraph went something like this. “Earlier today the pastor told us things about law that we all need to hear, absorb, and inwardly digest if we are going to maintain our sanity in the modern world, where brutal military dictators and bumbling bureaucrats have inordinate power, which they have repeatedly abused to assault human dignity, whether by attacking the Christians of Armenia, and or by dispossessing the Jews of Europe and stealing their property in order to pay for their mass murder. From Stalin to Pol Pot the Left has been as bad as Hitler and his ilk on the Right. We are in deep trouble if we think that we will find a way forward toward the rightness of things just by looking up the law in Lexis or Westlaw. But there is no point in my repeating the pastor’s arguments, so I will talk about two things that ought to be important at a Lutheran law school, but that this famous Lutheran pastor omitted to mention: the Bible and the Reformation.”

I hewed to the time allotted and made the best case I could for deeper connections between law and religion than were usual at that moment in the history of legal education: the genius of the common law in paying attention to the facts of the case and the insistence of the biblical tradition that great truths are disclosed in simple stories that turn out to be memorable paradigms, the enormous significance of Luther and Calvin in challenging the authority of tradition and requiring it to be evaluated and corrected by biblical narratives, the messy question the power of princes over the religious beliefs and practices of everyone in their territory ("*cuius regio, eius religio*"), and the American contribution of guaranteeing "full and free exercise of religion" (Madison's phrase in 1776, not mine) that finally put an end to Christendom (at least in this part of the world, if only we had the historical sense to realize the full import of the American shift and its later acceptance by my church at the Second Vatican Council). My conclusion acknowledged the shaping influence of an Episcopalian (Harold J. Berman) and two Roman Catholics (John T. Noonan and Dorothy Day) on what I think about law and religion.

Where does Jack come into this story? Most of Jack's students knew him as Mr. Jurisprudence of the Valpo School of Law. Baepler should have invited Hiller to respond to Neuhaus. I learned later that evening—and on numerous occasions in the past twenty years of our sojourn together—that he was far more qualified than I to do so. But two things evidently precluded this. First, a prophet often goes unheeded in his own country. Second, Jack was never self-promoting or one who sought the limelight.

At the heart of my appreciation of Jack is what happened next. He approached me not with his formidable intellect, but with a smile and an awareness that our university has not always been conspicuous for attention to hospitality. All he said was "I heard your car broke down, and would like to know if I can give you a ride back to South Bend." With these simple words Jack burst in on me in the way he later described in a Haiku verse on spontaneous responses to an unexpected downpour:

Sudden spring shower
opens every umbrella:
instant black mushrooms.

Twice in one day a stranger befriended me. In Jack's case I never forgot his name. The conversation on the way back to the Bend was one of those magical encounters so enriching and so challenging that it would shape me in many ways for decades to come, and eventually lead to an invitation to become his colleague at Valpo.

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From the friendship that Jack initiated that night, he became not only a casual friend, but also one of my very best teachers. What have I learned from him? With Socrates, that “the unexamined life is not worth living” (*Apology* 38a). With Jesus, that authority is not for power, but for service (Mark 10: 42–45). With John Henry Newman, that “to live is to change, and to be perfect is to have changed often” (*The Idea of a University*, 1873). With John Rawls, that rigorous jurisprudence cannot remain content with positivism, utilitarianism, or wealth maximization (*A Theory of Justice*, 1971). With Jimmy Carter, that “war may sometimes be a necessary evil, but it is always evil and never a good,” and that “we will never learn to make peace by killing one another’s children” (Nobel Peace Lecture, 2002). And even after the location of different mental and spiritual functions with hemispheres of the brain has become outmoded, that we can and even must use both rationality and irrationality, mathematical precision and random creativity to become more fully human.

Each of the great themes Jack and I explored that night—and in many subsequent opportunities to share meals together—have led to radical changes in my life: taking both religion and philosophy more seriously, paying closer attention to the folly of war and the fierce urgency of peace based on just relationships, writing with greater clarity and accessibility, expressing a grievance clearly and then letting it go, using film in my classes and even making documentaries that seek to open up vistas not yet explored.

Maybe even more important than the large ideas Jack taught me was the simple imperative of responsibility, or closing the gap between what one professes and what one actually does. This aspect of Jack’s teaching is summed up in an anonymous proverb sometimes attributed to a nineteenth century Quaker named Stephen Grellet. Jack once typed out these words on his portable typewriter and carried around with him in his wallet until the Thanksgiving Day on which he died: “I expect to pass through this world but once. Any good, therefore, that I can do or any kindness I can show to any fellow creature, let me do it now. Let me not defer or neglect it for I shall not pass this way again.”

The Good Samaritan in Luke’s Gospel (10:25–37) did not defer or neglect to show kindness to a fellow creature. No fellow creature was beneath Jack’s concern. He did not neglect the needs even of the raccoons in his neighborhood. Jack did not leave me stranded by the wayside that night. He showed me kindness. Now that you know this, perhaps you will do what you can for those who cross your path in need of help.